# Datuk M Kayveas v PV Das (for himself and on behalf of People's Progressive Party of Malaysia)

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO N-02-435 OF 1996

NH CHAN, MAHADEV SHANKAR AND AHMAD FAIRUZ JJCA

16 JULY 1997

***Civil Procedure*** *— Injunction — Interim injunction — Interim injunction to restrain appellant from holding himself out as the President of the Peoples' Progressive Party of Malaysia or from carrying out activities on behalf of the party — Appellant duly served and took part in court proceedings — Whether injunction granted in breach of O 29 r 1(2C) of the Rules of the High Court 1980 — Rules of the High Court 1980 O 29 r 1(2C) & O 32 rr 3, 13(2)(a)*

***Civil Procedure*** *— Judgments and orders — Application for interim order to stay interim injunction — Failure to give prior notice of application for interim order — Inter partes motion not duly served — Breach of rr 27(3) & 49 of the Rules of the Court of Appeal 1994 — Whether order regularly obtained — Whether order should be set aside — Rules of the Court of Appeal 1994 rr 27(3) & 49*

On 1 August 1996, the respondent ('Das') filed a writ of summons and a statement of claim against the the appellant ('Kayveas'). A summons in chambers for an interim injunction supported by an affidavit was also filed to restrain the appellant from holding himself out as the President of the Peoples' Progressive Party of Malaysia ('the party') or from carrying out activities on behalf of the party. It was clear that this was directed at the General Meeting Kayveas proposed to hold on 3 September 1996. The summons in chambers was originally headed 'Saman dalam Kamar Ex Parte'. However, before it was served on Kayveas on 5 August 1996, the word 'Ex' was deleted and substituted with the word 'Inter'. On 15 August 1996, Das and Kayveas both appeared before the judge. Kayveas's counsel submitted that under O 29 r 1(2C) of the Rules of the High Court 1980 ('the RHC'), an interim injunction on an ex parte application to stop the holding of a meeting of a society cannot be granted. On the balance of convenience, the High Court judge granted the interim injunction ('the interim injunction'). On 16 August 1996, Kayveas filed a notice of appeal and on 20 August 1996 he filed a notice of motion praying, inter alia, for an interim order that the interim injunction be stayed till the final disposal of this appeal. The President of the Court of Appeal granted the interim order ('the interim order'). In breach of his undertaking given in the High Court and the terms of the interim injunction, Kayveas held a press conference stating that he had obtained the interim order on 22 August 1996 and proposed to proceed with the General Assembly on 3 September 1996. No notice was given by Kayveas's solicitor to Das until 6 September 1996 that Kayveas's motion had been filed or that the interim order had been obtained.

**Held**, setting aside the interim order:

(1) The summons in chambers which resulted in the interim injunction was duly served on 5 August 1996 because O 32 r 3 of the RHC only required two clear days' notice. Order 32 r 13(2)(a) of the RHC was fulfilled because Das's affidavit in support was served within 14 days of the filing on 2 August 1995. Since Kayveas was duly served *and* took part in the High Court proceedings, it was not open to him to criticize the injunction as having been granted in breach of O 29 r 1(2C) of the RHC (see p 678H–I).

(2) The manner in which Kayveas's solicitors bypassed the procedural safeguards in the Court of Appeal was deeply disturbing. Kayveas's motion was an inter partes motion which had not been duly served and no notice thereof had been given before the interim order was obtained. The interim order purported to be an ex parte order made in the absence of the respondent. As no prior notice had been given, it was not regularly obtained.

However, even though Kayveas's motion was fixed for hearing on 16 September, the interim order extracted by Kayveas's solicitors on 28 August 1996 was conditioned to be effective until the final disposal of the appeal. In effect, therefore, Kayveas had purportedly obtained ex parte all the relief he prayed for before the inter partes hearing of his motion. Thus, the only useful order the court could make was that the interim order be set aside (see pp 679H–I and 680C–E).

**Obiter**:

By O 19 r 1(2B) of the RHC, an interim injunction obtained on ex parte application automatically lapses at the end of two weeks and injunctions to stop meetings cannot be granted on ex parte applications. Notwithstanding s 67 of the Courts of Judicature Act 1964, the proper remedy in the High Court for a party aggrieved by an order made ex parte in his absence is not to appeal but to apply to have it set aside by the judge who made it (see O 13 r 8, O 14 r 11, O 19 r 9, O 32 r 6 and O 35 r 2 of the RHC read with r 14 of the Rules) (see p 678B–D).

**Per curiam**:

There is a world of difference between an ex parte motion for an injunction where the respondent is present at the hearing, at the express or tacit invitation of the applicant, in order to assist and an ex parte hearing of an inter partes motion or application, where a party duly served fails to appear at the hearing (see p 678E–G); *United Overseas Bank Ltd v Chung Khiaw Bank Ltd* [1968] 2 MLJ 85 and *United Malayan Banking Corp Bhd v Sykt Perumahan Lunas Sdn Bhd* [1988] 1 MLJ 547 followed.

A **[Bahasa Malaysia summary**

Pada 1 Ogos 1996, penentang ('Das') telah memfailkan suatu writ saman dan pernyataan tuntutan terhadap perayu ('Kayveas'). Suatu saman dalam kamar untuk injunksi interim yang disokong oleh afidavit juga difailkan bagi menahan perayu daripada mendakwa dirinya B sebagai Presiden Parti Progresif Rakyat Malaysia ('parti tersebut') atau daripada menjalankan kegiatan bagi pihak parti tersebut. Adalah jelas ini ditujukan terhadap Mesyuarat Am Kayveas bercadang untuk mengadakan pada 3 September 1996. Saman dalam kamar itu pada asalnya bertajuk 'Saman dalam Kamar Ex Parte'. Namun demikian, sebelum ia disampaikan kepada Kayveas pada 5 Ogos 1996, perkataan C 'Ex' dipadamkan dan diganti dengan perkataan 'Inter'. Pada 15 Ogos 1996, kedua-dua Das dan Kayveas hadir di hadapan hakim. Peguam Kayveas berhujah bahawa di bawah A 29 k 1(2C) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'), injunksi interim atas suatu permohonan ex parte bagi menghalang mesyuarat suatu golongan D tidak boleh diberikan. Atas imbangan kemudahan, hakim Mahkamah Tinggi membenarkan injunksi interim ('injunksi interim'). Pada 16 Ogos 1996, Kayveas memfailkan suatu notis rayuan dan pada 20 Ogos 1996 dia memfailkan suatu notis usul meminta, antara lain, suatu perintah interim bahawa injunksi interim digantung sehingga penyelesaian muktamad rayuan ini. Presiden Mahkamah Rayuan E membenarkan perintah interim ('perintah interim tersebut'). Bertentangan dengan akujanji yang diberikannya di Mahkamah Tinggi dan terma injunksi interim, Kayveas telah mengadakan suatu sidang akhbar menyatakan bahawa beliau telah memperolehi perintah interim tersebut pada 22 Ogos 1996 dan bercadang untuk meneruskan F Mesyuarat Am pada 3 September 1996. Tiada notis diberikan oleh peguamcara Kayveas kepada Das sehingga 6 September 1996 bahawa usul Kayveas telah difailkan atau bahawa perintah interim tersebut telah diperolehi.

**Diputuskan,** mengetepikan perintah interim:

G (1) Saman dalam kamar yang menyebabkan injunksi interim telah disampaikan pada 5 Ogos 1996 kerana A 32 k 3 KMT hanya menghendaki notis dua hari genap. Aturan 32 k 13(2)(a) KMT dipenuhi kerana afidavit menyokong oleh Das disampaikan dalam tempoh 14 hari selepas pemfailan pada 2 Ogos 1995. Oleh H kerana Kayveas telah disampaikan *dan* menyertai prosiding Mahkamah Tinggi, ia tidak terbuka kepadanya untuk mengkritik injunksi itu sebagai telah dibenarkan bertentangan dengan A 29 k 1(2C) KMT (lihat ms 678H–I).

(2) Cara bagaimana peguamcara Kayveas memintasi prosedur pelindung di Mahkamah Rayuan adalah amat membimbangkan. I Usul Kayveas adalah suatu usul inter partes yang tidak disampaikan dan tiada notis tentangnya telah diberikan sebelum perintah interim tersebut diperolehi. Perintah interim tersebut kononnya adalah perintah ex parte yang dibuat dalam ketiadaan

penentang. Oleh kerana tiada notis terdahulu telah diberikan, ia tidak diperolehi mengikut aturan.

Walau bagaimanapun, sungguhpun usul Kayveas ditetapkan untuk pembicaraan pada 16 September, perintah interim tersebut yang didapatkan oleh peguamcara Kayveas pada 28 Ogos 1996 adalah dengan syarat ia berkuatkuasa sehingga penyelesaian muktamad rayuan. Oleh itu, pada hakikatnya, Kayveas kononnya telah memperolehi segala relief ex parte yang dipohon sebelum pembicaraan inter partes usulnya. Justeru itu, satu-satunya perintah yang berguna yang boleh dibuat oleh mahkamah adalah bahawa perintah interim tersebut diketepikan (lihat ms 679H–I dan 680C–E).

**Obiter**:

Menerusi A 19 k 1(2B) KMT, suatu injunksi interim yang diperolehi atas permohonan ex parte luput secara automatik apabila tamatnya dua minggu, dan injunksi-injunksi untuk menghalang mesyuarat tidak boleh diberikan atas permohonan ex parte. Tanpa mengambil kira s 67 Akta Mahkamah Kehakiman 1964, remedi yang betul di Mahkamah Tinggi untuk pihak yang terkilan atas perintah yang dibuat ex parte dalam ketidakhadirannya bukanlah untuk merayu tetapi memohon supaya ia diketepikan oleh hakim yang membuatnya (lihat A 13 k 8, A 14 k 11, A 19 k 9, A 32 k 6 dan A 35 k 2 KMT dibaca dengan k 14 Kaedah tersebut) (lihat ms 678B–D).

**Per curiam**:

Terdapat perbezaan yang ketara di antara suatu usul ex parte untuk injunksi di mana penentang hadir di pembicaraan, atas jemputan nyata atau tersirat pemohon, bagi memberi bantuan dan pembicaraan ex parte suatu usul atau permohonan inter partes di mana sesuatu pihak yang telah disampaikan dengan wajarnya gagal menghadiri pembicaraan (lihat ms 678E–G); *United Overseas Bank Ltd v Chung Khiaw Bank Ltd* [1968] 2 MLJ 85 dan *United Malayan Banking Corp Bhd v Sykt Perumahan Lunas Sdn Bhd* [1988] 1 MLJ 547 diikut.]

**Notes**

For cases on interim injunction, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1508–1534.

For cases on judgments and orders, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2032–2065.

**Cases referred to**

*Pickwick International Inc (GB) Ltd v Multiple Sound Distributors Ltd & Anor* [1972] 3 All ER 384 (refd)

*United Malayan Banking Corp Bhd v Sykt Perumahan Lunas Sdn Bhd* [1988] 1 MLJ 547 (folld)

*United Overseas Bank Ltd v Chung Khiaw Bank Ltd* [1968] 2 MLJ 85 (folld)

**Legislation referred to**

Courts of Judicature Act ss 43, 67
Rules of the Court of Appeal 1994 rr 13, 14, 27(3), 49
Rules of the High Court 1980 O 13 r 8, O 14 r 11, O 19 rr 1(2B), 9, O 29 r 1(2C), O 32 rr 3, 6, 13(2)(a), (b), O 35 r 2
Societies Act 1966 s 18(c)

**Appeal from**: Suit No 22–72 of 1996 (High Court, Seremban)

*DP Nabhan, N Mohandas* and *PC Low* (*Blanche Kayveas & Co*) for the appellant.
*Tun Salleh Abas* (*Rugber Singh & Partners*) for the respondent.
*Lee Choon Hei, Mohamad Ashfar Ali* and *Blanche O'Leary* on watching brief.

*Cur Adv Vult*

**Mahadev Shankar JCA** (delivering the judgment of the court): On 1 August 1996, the respondent/plaintiff ('Das') filed a writ of summons and a statement of claim in the High Court at Seremban praying for an order that he be declared the lawful President of the Peoples' Progressive Party of Malaysia ('the party') and that the recognition accorded by the Registrar of Societies to the appellant/defendant ('Kayveas') as President, and his colleagues as office bearers of the party, be quashed and for an injunction that Kayveas be restrained from holding himself out as the President of the party or from carrying out a number of other designated activities ('party activities') on behalf of the party.

The same day, Das filed a summons in chambers for an interim injunction supported by an affidavit. This summons in chambers was originally headed 'Saman dalam Kamar Ex Parte'. However, before it was served, the word 'Ex' was deleted and substituted with the word 'Inter'. The writ, statement of claim, 'saman dalam kamar inter parte', and the affidavit in support were all served on Kayveas on 5 August 1996. The return date of the summons was 15 August 1996. Kayveas signed for those cause papers himself, and endorsed the service copies, 'Received without prejudice'.

Kayveas avers that on 8 August 1996 he entered a conditional appearance to the writ.

On 15 August 1996, Das and Kayveas both appeared before the judge. Das's solicitor, En Rugber Singh, and his counsel Tun Salleh Abas were also present. Encik PC Low was present as Kayveas's counsel.

Kayveas's counsel objected to the summons being heard, claiming he was entitled to 14 days to file an affidavit in reply to Das's affidavit. The judge promptly gave Kayveas up to 29 August 1996 to file his affidavit in reply. Kayveas' counsel then referred to s 18(c) of the Societies Act 1966 ('the Act') and submitted that under O 29 r 1(2C) of the Rules of the High Court 1980 ('the RHC') an interim injunction on an ex parte application to stop the holding of a meeting of a society cannot be granted.

The judge's note as to what Kayveas and Tun Salleh said next reads: A

If court mindful of giving interim order, I ask for a short adjournment to file my affidavit in reply so that this case may be heard inter partes.

I undertake not to do anything personally to jeopardize the position of the plaintiff.

Peguam plaintif: Undertaking defendan tidak mencukupi dan memohon B perintah interim sementara menunggu keputusan permohonan ini.

Peguam defendan (Kayveas): Undertaking subject to me filing affidavit in reply and this application be heard today and as plaintiff requires time to file reply, I opt to file within two weeks.

Peguam plaintif: Irreparable damage jika order interim tidak dibenarkan. C

Because counsel for Das insisted on an interim injunction, arguments followed on whether it should be granted. What was specifically in issue was whether the party's Annual General Assembly fixed for 3 September 1996 should be permitted to proceed. Kayveas had with him two affidavits he had affirmed in opposition. Kayveas would not *file* them in court then D and there. He nevertheless handed over copies of the same to Das's solicitors.

The balance of convenience was then fully argued and the decision made by the judge the same afternoon reads as follows:

Keputusan: E

Defendan telah diendors sebagai President and AJK di EDC pada 19 Mac 1995 yang terdiri dari AJK yang dipilih pada 10 Oktober 1993. Plaintif telah dipilih sebagai President AJK di TDC pada 13 Ogos 1995 di Segamat.

TDC hendaklah diadakan tiga tahun sekali pada 1988, 1991, 1994 dan 1997 tapi tiada TDC diadakan pada 1991 atau 1994. Ia dikatakan diadakan pada 1995. Ini menimbulkan persoalan yang serius sama ada EDC pada F 19 Mac 1995 yang mengendors pemilihan defendan adalah sah atau tidak.

Defendan akan mengadakan mesyuarat TDC pada 3 September 1996 dan, pada masa itu, isu yang dipertikaikan di atas belum diputuskan. TDC ini jika diadakan akan merumitkan keadaan dua atau tiga pihak yang bertikai. Atas keseimbangan keselesaan [balance of convenience] perintah interim G patut dibenarkan.

Mahkamah beri perintah interim sebagai dipohon kecuali prayer (iii) sehingga penyelesaian permohonan ini.

The injunction granted by the court ('the injunction') forbade Kayveas from holding himself out as a member or as President of the party or H carrying out any party activities until the application made in the summons in chambers had been disposed of. The draft order was approved by Kayveas' solicitors. Inter alia, it forbade Kayveas from advertising himself as a member or President of the party or using his authority to hold any meeting of the party. Clearly, this was directed at the General Meeting Kayveas proposed to hold on 3 September 1996 because the implications I of that meeting were ventilated in the arguments.

If the timetable set by the court at the request of both parties had been followed, Kayveas should have filed his affidavit in opposition on or before 29 August, Das his affidavit in reply within 14 days therefrom, and

A a hearing would have taken place thereafter before the trial judge to determine whether the said injunction should continue until the trial of the action.

Instead of allowing this timetable to take its course, Kayveas filed a notice of appeal on 16 August 1996. At 3.14pm on 21 August 1996, Blanche Kayveas & Co (Kayveas' solicitors) filed a letter dated 20 August B 1996 in the Court of Appeal Registry ('the Registry'). The letter was addressed to the President. It referred to a notice of motion and affidavit filed on 20 August 1996. No such motion and affidavit had been filed on 20 August 1996. In fact, the motion ('Kayveas' motion') and his affidavit in support and a certificate of urgency were all dated and filed on 21 August 1996. Kayveas' motion prayed for the following orders:

C

(i) an order to stay the interim injunction made by the trial judge on 15 August 1996;

(ii) an order that the hearing of this motion inter partes in the Court of Appeal be stayed pending Kayveas being given 14 days to file a further affidavit;

D

(iii) an interim order that the interim injunction of 15 August 1996 be stayed till the final disposal of this appeal;

(iv) costs be costs in the cause;

(v) damages special, general and exemplary be assessed by the Registrar of the High Court at Seremban and paid to Kayveas; and

E

(vi) such further relief as may be thought just.

The very next day (ie 22 August 1966), Kayveas obtained an interim from the President of the Court of Appeal in terms of his third prayer ('the interim order'). Kayveas's motion was fixed for hearing inter partes on F 16 September 1996.

Although by rr 13 and 14 of the Rules of the Court of Appeal 1994 ('the Rules') and s 43 (as amended) of the Courts of Judicature Act 1964 any application for stay should have been made in the first instance to the High Court, no such application was made. Nor does Kayveas's supporting G affidavit give any reason for this omission.

Furthermore, Kayveas' motion did not state that any application was being made ex parte. As appears from the material now before this court, no notice was given by Kayveas' solicitors to Das or his solicitors until 6 September 1996 that this motion had been filed or that the said interim order had been obtained.

H

In breach of his undertaking given in the High Court and the terms of the said injunction, Kayveas held a press conference and was reported by *The New Straits Times* of 30 August 1996 as having said that he had obtained the said interim order on 22 August and proposed to proceed with the General Assembly on 3 September 1996.

I

It is from this press report that Das learnt of the said interim order. 31 August was a public holiday, and 1 September was a Sunday.

After inspecting the court file to discover what had really happened, Das filed his motion ('Das's motion') on 3 September 1996. The first prayer in Das's motion is that it be heard ex parte on the basis of urgency

and in the interest of justice. In this, he did not succeed. The Registry fixed his motion for hearing inter partes only on 16 September 1996. Thus, the very event which the said injunction was designed to prevent became a *fait accompli.*

So on 16 September 1996, we heard both Kayveas's motion and Das's motion together.

Counsel for Kayveas, Mr Nabhan submitted that the injunction in the High Court was an ex parte order but it was nevertheless appealable! There are serious procedural implications here. By O 19 r 1(2B) of the RHC, an interim injunction obtained on ex parte *application* automatically lapses at the end of two weeks, and injunctions to stop meetings cannot be granted on ex parte applications. Notwithstanding s 67 of the Courts of Judicature Act 1964, the proper remedy in the High Court for a party aggrieved by an order made ex parte in his absence is not to appeal but to apply to have it set aside by the judge who made it (see O 13 r 8, O 14 r 11, O 19 r 9, O 32 r 6 and O 35 r 2 of the RHC read with r 14 of the Rules).

Mr Nabhan referred us to *Pickwick International Inc (GB) Ltd v Multiple Sound Distributors Ltd & Anor* [1972] 3 All ER 384 to contend that even though Kayveas was present at the hearing on 15 August and took part in the hearing, the application remained an ex parte application — albeit an opposed ex parte application.

There is a world of difference between an ex parte motion for an injunction where the respondent is present at the hearing, at the express or tacit invitation of the applicant, in order to assist (as in *Pickwick International Inc (GB) Ltd v Multiple Sound Distributors Ltd & Anor*) and an ex parte hearing of an inter partes motion or application where a party duly served fails to appear at the hearing; see the decision of the Federal Court in *United Overseas Bank Ltd v Chung Khiaw Bank Ltd* [1968] 2 MLJ 85 where the first ratio in the headnote reads:

> Held, allowing the appeal: (1) a judge may proceed ex parte to hear an application where a party duly served fails to appear at the time appointed for the hearing. An application so heard in the absence of a party is not an ex parte application. It is the hearing which is ex parte and an order made on such hearing is an ex parte order within the terms of O LIII r 4(1).

This was followed by Edgar Joseph Jr J (as he then was) in *United Malayan Banking Corp Bhd v Sykt Perumahan Lunas Sdn Bhd* [1988] 1 MLJ 547.

The summons in chambers which resulted in the injunction was duly served on 5 August 1996 because O 32 r 3 of the RHC only required two clear days' notice. Order 32 r 13(2)(a) of the RHC was fulfilled because Das's affidavit in support was served within 14 days of the filing on 2 August 1995. It is arguable whether O 32 r 13(2)(b) means that in any event Kayveas had 14 days from 5 August to file his reply. The rule says he must file it within 14 days. This leaves it open to contention that if there is to be an earlier hearing, Kayveas had to file his affidavit earlier or get the summons adjourned. Since Kayveas was duly served *and* took part in the High Court proceedings, it was not open to him to criticize the injunction as having been granted in breach of O 29 r 1(2C) of the RHC.

Briefly, Tun Salleh's criticisms of the conduct of Kayveas and his solicitors in the Court of Appeal are as follows:

(i) the injunction was made after Kayveas gave the High Court an undertaking that he would do nothing to prejudice Das's position. He breached that undertaking;

(ii) Kayveas got an extension of time from the trial judge to file the affidavits he had in hand on 15 August, thereby leading both the High Court and Das's solicitors to believe that Kayveas intended that a further hearing, also inter partes, would be held to determine if the injunction shall continue. By failing to file the affidavits and applying to the Court of Appeal for an ex parte order, he misled the court and Das;

(iii) if he intended to obtain a stay, he should have applied to the trial judge after giving notice to Das. He did not;

(iv) *only applications for leave to give shorter notice* of motion of less than seven days can be made by motion ex parte. On its face, Kayveas's motion was an inter partes motion. By failing to give prior notice of his application for the interim order in the Court of Appeal, Kayveas breached r 49 which, read with r 27(3), made it incumbent upon Kayveas to give notice to Das; and

(v) Kayveas' prayers to suspend the hearing of his motion inter partes for 14 days was deliberately done to facilitate the holding of the General Meeting of 3 September in defiance of his own earlier undertaking to the trial judge. It was submitted that the total omission of Kayveas to file any further affidavit or timeously to notify Das that he had got the order and his omission to serve the cause papers until 6 September 1996 was a calculated deception of all parties concerned.

These are serious criticisms. They were not rebutted. All Mr Nabhan could say was that the injunction could not be justified because it was made in violation of O 29 r 1(2C) of the RHC and s 18(c) of the Societies Act 1966. We have already touched on O 29 r 1(2C). As for s 18(c) of the Societies Act, the issue was whether Kayveas was authorized to act at all, and as for Kayveas' complaint that he was not given a reasonable opportunity of being heard in the High Court, the record indicates otherwise. It was on the strength of Kayveas' undertaking and his request for an extension of 14 days to file the affidavits he already had with him, that the hearing was adjourned and an injunction made to preserve the status quo in the High Court.

The manner in which Kayveas' solicitors bypassed the procedural safeguards in the Court of Appeal is deeply disturbing. An inspection of the court file shows that the covering letter written by Kayveas' solicitors to the Registrar of 21 August 1996 filing his cause papers (see encl 5) *purports* to have been copied to Das' solicitors. The relevant endorsement reads:

Lamp

sk Penentang dan/atau peguamcaranya
Tetuan Rugber Singh & Partners
Peguambela & Peguamcara

No 25-1, (Tingkat Atas)
Jalan Majili
84000 Muar
Johor Darul Takzim.

This could have given the Registry and the President the impression that the required notice had been given. Why was this letter not immediately served with the enclosures or faxed to Das's solicitors? Why was service of the cause papers and the interim order delayed until 6 September 1996?

All Mr Nabhan was able to say to us about these lapses is that the practice adopted by Kayveas' solicitors could have been better. He frankly conceded they only notified Das' solicitors of the steps that they had taken after the damage was done.

In the result, we were faced with an anomalous situation. Kayveas's motion was an inter partes motion which had not been duly served and no notice thereof had been given before the interim order was obtained. That interim order purported to be an ex parte order made in the absence of the respondent. As no prior notice had been given, it was not regularly obtained. However, even though Kayveas's motion was fixed for hearing on 16 September, the interim order extracted by Kayveas's solicitors on 28 August 1996 was conditioned to be effective until the final disposal of the appeal. In effect, therefore, Kayveas had purportedly obtained ex parte all the relief he prayed for before the inter partes hearing of his motion. Thus, the only useful order we could make on these two motions was that the said interim order be set aside as prayed for by Das. So we made no order on Kayveas' motion, but ordered that the costs in respect of both motions be taxed and paid by Kayveas to Das.

The uninitiated may well be pardoned for thinking that what has happened so far in this case is only yet another example of Newton's third law of motion that to every action there is an equal and opposite reaction. If all Kayveas says about Das is true, the statement of claim and the interim injunction sought by Das was really a most mischievous attempt to derail not only Kayveas and his committee but also the electoral process scheduled for 3 September 1996. And Kayveas' allegations are ostensibly supported by a powerful body of collateral testimony. But then if what Das says about Kayveas is true, Kayveas is an imposter who has no right to claim even the status of an ordinary member of the party let alone the Presidency. The High Court judge was not directly concerned with the merits of the case but with the balance of convenience and whether there was a serious question to be tried. Our only concern was whether the interim order should be set aside. The larger issues incidental to Tun Salleh's complaints aforesaid must therefore be the subject of further determination if the combatants cannot resolve their differences.

*Order accordingly.*

Reported by Jafisah Jaafar